

## **AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2007-19 is available for public comments under this procedure. It was requested by Timothy Sawyer Knowlton, Esq., on behalf of Renaissance Health Service Corporation.

Draft Advisory Opinion 2007-19 is scheduled to be on the Commission's agenda for its public meeting of Thursday, November 15, 2007.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 5:00pm (Eastern Time) on November 14, 2007.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

**CONTACTS**

Press inquiries: Robert Biersack (202) 694-1220

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Other inquiries:

To obtain copies of documents related to AO 2007-19, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

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## AGENDA ITEM

For Meeting of: 11-15-07

### SUBMITTED LATE

### MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Ron Katwan *RBK*  
Assistant General Counsel

Jonathan M. Levin *JML*  
Senior Attorney

Subject: Draft AO 2007-19

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 15, 2007.

Attachment

1    **ADVISORY OPINION 2007-19**

2    Timothy Sawyer Knowlton, Esq.  
3    Honigman Miller Schwartz and Cohen, LLP  
4    222 North Washington Square  
5    Suite 400  
6    Lansing, MI 48933-1800

**DRAFT**

7    Dear Mr. Knowlton:

8           We are responding to your advisory opinion request on behalf of Renaissance  
9    Health Service Corporation (“Renaissance”) regarding whether, under the Federal  
10   Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations,  
11   individuals selected to be members of Renaissance by two entities related to Renaissance  
12   qualify as “members” for purposes of the Act.

13           The Commission concludes that, under the Act and Commission regulations,  
14   Renaissance is a “membership organization” and the individuals selected by the two  
15   entities are “members.” Renaissance may thus solicit the individuals for contributions to  
16   a separate segregated fund (“SSF”) formed by Renaissance.

17    ***Background***

18           The facts presented in this advisory opinion are based on your letters received on  
19   May 10, July 2, and September 5, 2007, phone conversations with Commission staff on  
20   October 3 and 16, 2007, and an e-mailed organizational chart received on June 11, 2007.

21           Renaissance is a non-profit corporation that is exempt from taxation under section  
22   501(c)(4) of the Internal Revenue Code. It was originally named the Michigan Dental  
23   Corporation and was incorporated under Michigan non-profit corporation law in 1957 as  
24   a non-stock operating company administering dental plans. In 1963, it became a non-  
25   operating holding company for Delta Dental Plan of Michigan (“DDPMI”). Currently,

1 Renaissance has 75 members, all of whom are individuals. The Bylaws of Renaissance  
2 fix the number of “voting members” at 75. However, the Renaissance board of directors  
3 may, by resolution, increase the number of voting members to a maximum of 100.  
4 Renaissance Bylaws (“Bylaws”), Article II, Section 1. Renaissance has not yet  
5 established an SSF.

6 Renaissance’s Articles of Incorporation list a number of purposes for the  
7 company but principally it serves as a holding company for DDDPMI and Delta Dental  
8 of Tennessee (“DDTN”) and other companies that it directly or indirectly owns or  
9 controls.<sup>1</sup> DDPMI and DDTN, which are both 501(c)(4) non-profit corporations,  
10 administer dental plans. Renaissance also directly supports programs to promote access  
11 to dental care and the advancement of dental science. For example, Renaissance makes  
12 large charitable contributions to public and private community health projects.<sup>2</sup>

13 Renaissance is the sole corporate member of DDPMI and DDTN and, hence,  
14 “controls” them. Renaissance has entered into an “Affiliation Agreement” with these two  
15 companies. In accordance with this agreement and the Renaissance Bylaws, DDPMI  
16 selects no more than 68 of the 75 members of Renaissance, and DDTN selects no fewer  
17 than seven. The members serve three-year terms and may be re-appointed by DDPMI or  
18 DDTN to further terms. Bylaws, Article II, Section 1. Subject to conditions explained  
19 below, these 75 individuals elect the board of directors of Renaissance at the annual

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<sup>1</sup> In a June 11 e-mail to the Commission, you sent an organizational chart showing the companies that Renaissance directly or indirectly controls (*e.g.*, DDPMI and DDTN and companies controlled by DDPMI and Renaissance through their partial ownership of the Renaissance Holding Company). Of these approximately 20 entities, only four have employees – DDPMI, DDTN, Renaissance Systems and Services, and Renaissance Life and Health Insurance Company of America.

<sup>2</sup> Renaissance has approximately \$18 million in cash and securities. These funds were generated during Renaissance’s time as an operating company and from investment income accumulated from funds earned at that time.

1 membership meetings. Those directors who were not members of Renaissance prior to  
2 their election to the board of directors become members of Renaissance upon their  
3 election.

4       The board exercises Renaissance's corporate powers. Bylaws, Article III; *see*  
5 *also* Bylaws, Articles V, VI, VII, and XI (describing such powers as electing, and serving  
6 as, officers and managing company assets). Generally, directors serve three-year terms  
7 as directors and may be re-elected to the board no more than twice. Director terms are  
8 staggered so that board members are elected at each annual membership meeting. You  
9 state that, once a member becomes a director, his membership term becomes at least co-  
10 extensive with his tenure as director; even if his three-year membership term ends before  
11 his director term, he will not be replaced as a member until his tenure as director ends.

12       The Bylaws permit the removal of a member during his or her membership  
13 appointment if the member refuses to comply with the conditions of the voting agreement  
14 among the members that is required by the Affiliation Agreement. Bylaws, Article II,  
15 Section 1. The voting agreement requires that, in electing the 19 directors of  
16 Renaissance, the members must vote such that no more than 17 directors represent  
17 DDPMI and no fewer than two directors represent DDTN. Renaissance's nominating  
18 committee, which consists of at least five directors, selects the potential directors to be  
19 voted on in a separate procedure by the members. Although two of the nominees must be  
20 acceptable to DDTN, DDPMI and DDTN do not impose the slate of nominees, and  
21 Renaissance members may also propose nominees to the nominating committee. A  
22 member may comply with the voting agreement by voting for individuals who are among

1 the DDTN-selected members of Renaissance for the board seats associated with DDTN,  
2 and need not limit his or her vote to the two nominees.

3 ***Questions Presented***

4 *(1) Do the 75 individuals selected by DDPMI and DDTN to be members of*  
5 *Renaissance qualify as “members” of a “membership organization” under the Act and*  
6 *Commission regulations, so that Renaissance may solicit them for contributions to its*  
7 *SSF?*

8 *(2) If the 75 individuals do not qualify as “members” of Renaissance under the*  
9 *Act and Commission regulations, do the 17 directors qualify as executive or*  
10 *administrative personnel, as defined in 11 CFR 114.1(c), so that Renaissance may solicit*  
11 *them for contributions to its SSF?*

12 ***Legal Analysis and Conclusions***

13 *(1) Do the 75 individuals selected by DDPMI and DDTN to be members of*  
14 *Renaissance qualify as “members” of a “membership organization” under the Act and*  
15 *Commission regulations, so that Renaissance may solicit them for contributions to its*  
16 *SSF?*

17 Yes, under the Act and Commission regulations, Renaissance is a “membership  
18 organization,” and the 75 individuals are its “members” and may be solicited by  
19 Renaissance for contributions to its SSF.

20 As an exception to the prohibition on corporate contributions and expenditures,  
21 the Act and Commission regulations provide that an incorporated membership  
22 organization, cooperative, or corporation without capital stock, or an SSF established by  
23 such an entity, may solicit voluntary contributions to the SSF, at any time, from the

1 entity's members and their families, as well as the entity's executive and administrative  
2 personnel and their families. 2 U.S.C. 441b(b)(2)(C) and 441b(b)(4)(C); 11 CFR  
3 114.1(a)(2)(iii) and 114.7(a).

4 *a. Application of the definitions of "membership organization" and "member"*

5 *i. Application of the "membership organization" criteria*

6 Commission regulations define a "membership organization" as a trade  
7 association, cooperative, or corporation without capital stock that:

8 (i) Is composed of members, some or all of whom are vested with the  
9 power and authority to operate or administer the organization, pursuant  
10 to the organization's articles, bylaws, constitution or other formal  
11 organizational documents;

12  
13 (ii) Expressly states the qualifications and requirements for membership in  
14 its articles, bylaws, constitution or other formal organizational  
15 documents;

16  
17 (iii) Makes its articles, bylaws, constitution, or other formal organizational  
18 documents available to its members upon request;

19  
20 (iv) Expressly solicits persons to become members;

21  
22 (v) Expressly acknowledges the acceptance of membership, such as by  
23 sending a membership card or including the member's name on a  
24 membership newsletter list; and

25  
26 (vi) Is not organized primarily for the purpose of influencing the  
27 nomination for election, or election, of any individual to Federal  
28 office.

29  
30 11 CFR 114.1(e)(1)(i)-(vi) and 100.134(e)(1)-(6). An organization must meet all six

31 criteria in 11 CFR 114.1(e)(1) and 100.134(e) to qualify as a "membership organization."

32 According to the Bylaws, the members of Renaissance elect the board of directors  
33 who generally serve three-year terms and may be re-elected no more than twice.

34 Moreover, members serve on the board, and any non-member chosen for the board

1 becomes a member of Renaissance upon election to the board. These facts support a  
2 conclusion that at least some of the individual members are vested with the power and  
3 authority to operate or administer Renaissance through their board membership, or that  
4 all of the individual members are vested with such power and authority by their ability to  
5 elect the members of the board. *See* 11 CFR 114.1(e)(1)(i) and 100.134(e)(1). *See also*  
6 *Advisory Opinions 2006-17 (Berkeley Electric Cooperative) and 1999-40 (National*  
7 *Rural Electric Cooperative Association)* (indicating that members have the power to  
8 operate or administer a membership organization through the ability to select the board of  
9 directors); and *Advisory Opinion 2007-16 (American Kennel Club)* (discussing the first  
10 membership organization criterion with reference to the organization's requirement that  
11 its board of directors consist of a subset of the voting delegates of the organization's  
12 members).

13       There are some limits on the discretion exercised by directors and other members  
14 when making decisions or voting. A member can be removed during his or her  
15 membership appointment if the member refuses to comply with the conditions of the  
16 voting agreement. Moreover, DDPMI and DDTN can decide not to re-appoint members  
17 to additional three-year terms. However, even if the limit on the members' right to select  
18 the board of directors may raise questions about whether all 75 members are vested with  
19 "the power and authority to operate or administer" Renaissance, the directors, who  
20 comprise a subset of the members, exercise the corporate powers of Renaissance and  
21 manage the company. Moreover, even if DDPMI or DDTN do not want to re-select a  
22 director as a member of Renaissance, that member can continue to serve as a member so  
23 long as he or she is serving out his or her director term. The first membership

1 organization criterion is thus satisfied because at least some of the members are vested  
2 with the power and authority to operate or administer Renaissance during their three-year  
3 terms as director.

4 Information and materials provided by you indicate that Renaissance satisfies the  
5 second through sixth criteria for qualifying as a “membership organization.” The Bylaws  
6 expressly set forth the qualifications for membership, stating that the members:

7 shall be selected for their interest in and qualification to advance the  
8 purposes of [Renaissance] and the concept of extending the benefits of  
9 dentistry and any other ancillary benefits [Renaissance] deems beneficial.  
10 Only persons who demonstrate and maintain their acceptance and concern  
11 for the purposes and objectives of [Renaissance] shall be eligible to  
12 become and remain members of [Renaissance].

13  
14 Bylaws, Article II, Section 1. Each member must also agree to be bound by the terms of  
15 the voting agreement described above, and refusal to comply with the voting agreement  
16 disqualifies the individual from serving as a member. Bylaws, Article II, Section 1. *See*  
17 11 CFR 114.1(e)(1)(ii) and 100.134(e)(2).

18 Renaissance’s Articles of Incorporation and Bylaws are made available to any  
19 member upon that individual’s request. Renaissance expressly invites individuals to be  
20 members upon their selection by DDPMI or DDTN. Although membership cards are not  
21 sent to members, each individual invited to be a member must agree to be a member  
22 before achieving membership status, and each member is given agenda documents from  
23 Renaissance in advance of each annual meeting. *See* 11 CFR 114.1(e)(1)(iii)-(v) and  
24 100.134(e)(3)-(5).

25 Renaissance has existed since 1957, was not organized for the purpose of  
26 influencing any nomination for election, or election, of any individual to Federal office,

1 and has not changed its purpose to one of influencing Federal elections. *See* 11 CFR  
2 114.1(e)(1)(i) and 100.134(e)(6). Renaissance's membership includes retired employees  
3 of DDPMI, dentists participating in a dental network maintained by DDPMI or DDTN  
4 for the benefit of subscribers covered by the dental plans, retired dentists, subscribers to  
5 DDPMI and DDTN, and other individuals. For many years, the number of members at  
6 any one time had totaled 68, and the provision for this number of members was to ensure  
7 a broad representation of constituencies that provide and utilize dental services. In 2005,  
8 when DDTN affiliated with DDPMI through Renaissance, seven members associated  
9 with DDTN were added. Thus, the membership is made up of a small group of  
10 individuals that has historically served, and continues to serve, the purposes of  
11 Renaissance as an organization promoting access to dental care and the advancement of  
12 dentistry, and not the purpose of influencing Federal elections.

13 *ii. Application of the criteria for "member"*

14 Commission regulations provide that the term "members" includes all persons  
15 who are currently satisfying the requirements for membership in a membership  
16 organization, affirmatively accept the membership organization's invitation to become a  
17 member, and either:

- 18  
19 (i) Have some significant financial attachment to the membership organization,  
20 such as a significant investment or ownership stake; or  
21  
22 (ii) Pay membership dues at least annually, of a specific amount predetermined by  
23 the organization; or  
24  
25 (iii) Have a significant organizational attachment to the membership organization  
26 which includes: affirmation of membership on at least an annual basis; and direct  
27 participatory rights in the governance of the organization. For example, such  
28 rights could include the right to vote directly or indirectly for at least one

1 individual on the membership organization's highest governing board; the right to  
2 vote directly for organization officers; the right to vote on policy questions where  
3 the highest governing body of the membership organization is obligated to abide  
4 by the results; the right to approve the organization's annual budget; or the right to  
5 participate directly in similar aspects of the organization's governance.

6  
7 11 CFR 114.1(e)(2)(i) through (iii) and 100.134(f)(1)-(3).

8  
9 The 75 individuals satisfy the requirements for membership set forth in  
10 Renaissance's Bylaws, affirmatively accept Renaissance's invitation to be a member, and  
11 affirm membership on an annual basis.<sup>3</sup> See 11 CFR 114.1(e)(2)(iii) and 100.134(f)(3).

12 With respect to the exercise of participatory rights, the Bylaws provide for the  
13 individual member's right to vote in the election of board members, as described above,  
14 and for other member voting rights that are not subject to the voting agreement.

15 Specifically, the members may amend the Bylaws by a majority vote of those present at  
16 an annual or special meeting. Moreover, prior written approval of the members is

17 required for the Board of Directors to amend or repeal the Bylaws in such a way as to

18 change: (a) the identity, qualification, or rights of the members; (b) the qualifications,

19 classifications, terms of office, or permissible number of members of the board; or (c)

20 any limitation on the rights or authority of the board contained in the Bylaws or Articles

21 of Incorporation. Bylaws, Article VIII, Section 1. In addition, Michigan law requires

22 that the members have the right to approve or reject: (1) any proposed merger or

23 consolidation; (2) a sale, lease, exchange or other disposition of all or substantially all of

24 Renaissance's assets; and (3) Renaissance's dissolution. See Michigan Compiled Laws

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<sup>3</sup> Specifically, members are invited to the annual meeting and given agenda documents. If a member fails to appear without giving advance notice of the absence, Renaissance contacts that individual to ascertain if he or she continues to be interested in membership. If not, the person's membership is ended.

1 450.2703, 450.2753, and 450.2804. Although not provided for in the Bylaws, members  
2 occasionally vote on particular contributions to dental care-related charitable projects.

3 The 75 individual members are subject to the voting agreement described above  
4 and DDPMI and DDTN can deny re-appointment as a member to an individual member  
5 even if such member complies with the voting agreement. Nevertheless, the 75  
6 individuals have some limited discretion in the important function of voting for directors,  
7 and have greater discretion in voting on other specific matters. Hence, these individuals  
8 have sufficient direct participatory rights during their three-year member terms to meet  
9 the definition of “member” at 11 CFR 114.1(e)(2) iii) and 100.134(f)(3).

10 *c. Conclusion*

11 Based on the forgoing facts and analysis, the Commission concludes that, under  
12 Commission regulations, Renaissance is a “membership organization” and the 75  
13 individuals are “members” of Renaissance. Hence, pursuant to 2 U.S.C. 441b(b)(2)(C)  
14 and 441b(b)(4)(C), Renaissance or any SSF it creates may solicit the 75 individuals at  
15 any time for contributions to the SSF.

16 *(2) If the 75 individuals do not qualify as “members” of Renaissance under the*  
17 *Act and Commission regulations, do the 17 directors qualify as executive or*  
18 *administrative personnel, as defined in 11 CFR 114.1(c), so that Renaissance may solicit*  
19 *them for contributions to its SSF?*

20 Because the Commission has answered the first question in the affirmative and  
21 because the directors themselves become members of Renaissance at the time they join  
22 the board if they were not members already, the Commission need not respond to the  
23 second question. As members of Renaissance, such individuals are solicitable.

